

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE:

URETHANE ANTITRUST LITIGATION

CASE NO. 04-1616

TRANSCRIPT OF TELEPHONE CONFERENCE
before
HONORABLE JOHN W. LUNGSTRUM
on
DECEMBER 7, 2012

APPEARANCES

For the Class
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913-735-2334

1 THE COURT: Without objection -- and I hope
2 we can do this -- I'm going to take up Document
3 No. 2568, which has not been responded to, which
4 dealt with those two witnesses, and tell you here is
5 what I want you to do. That is, with regard to
6 Fischer, I want to make this clear. As of now what I
7 understand the situation is is that Dow has told the
8 plaintiff that Fischer does not appear to be
9 available live; therefore, he will be called by
10 videotaped deposition. However, if the parties
11 jointly are able to come to an accommodation for
12 Fischer to testify live, I will certainly honor that
13 accommodation, but that accommodation will require
14 that he testify live during the plaintiffs'
15 case-in-chief as well as the defendants' case. Is
16 that clear with regard to Fischer?

17 MR. GUZMAN: It is. Thank you, your Honor.

18 THE COURT: Is that clear to you, Mr. Loeb?

19 MR. LOEB: I think so, your Honor. Thank
20 you.

21 THE COURT: Beitel's situation, clarify
22 that for me, if you would a little bit. I have lost
23 a little bit of track here. Is he under your
24 control, or is he a former also?

25 MR. LOEB: He's not. He's a former

1 employee who left Dow in 2004, but we are in contact
2 with him, and he is planning to appear. So we don't
3 have control, but we do have some contact, and we
4 have that information about his willingness.

5 THE COURT: All right. Now, I have no idea
6 what the circumstances may be with regard to Beitel's
7 availability, but I tend to agree with the plaintiffs
8 that he should -- these witnesses should be in a
9 position to testify live in both sides' cases if at
10 all possible. So what I am directing Dow to do on
11 this point is, in your dealings with Mr. Beitel, I
12 want to impress upon him that we appreciate his
13 willingness to come but that he needs to make himself
14 available, perhaps, twice. The first time, of
15 course, would be at the plaintiffs' expense, not at
16 Dow's expense, but through your good offices in
17 brokering his attendance. But I'm inclined to
18 enforce the notion that he would need to testify live
19 in both cases or by video in both cases. All right?

20 MR. LOEB: Your Honor, I understand the
21 direction and the ruling. The comment I would make
22 on this is two-fold: One is, we will certainly use
23 our contacts with Mr. Beitel to assure that he's as
24 available, according to the court's wishes and
25 schedule, as possible. Secondly, it's our very

1 present their case as they feel they need to present
2 it. While it's good to be able to keep somebody from
3 having to make a second trip, and it's good in some
4 respects, less confusing in editing videotapes and so
5 forth, perhaps, to have some continuity in the
6 testimony; nonetheless, I think the primary objective
7 should be to permit the plaintiffs to have their day
8 in court, so to speak, to present their evidence the
9 way they want to present it, and not have that
10 coopted by the defendants being permitted to cross
11 examine beyond the scope of the direct, as I say,
12 except upon agreement of the parties to accommodate a
13 witness or to deal with whatever other justification
14 you all come to by yourselves. But when push comes
15 to shove, if there's a disagreement, I'm going to
16 lean to the side of allowing the plaintiffs to try
17 their case the way they want to. So that's not a
18 ruling; that's simply a guidance of where this will
19 come down when the case -- when I have to make a
20 ruling on that subject.

21 All right. Anything else that we ought to do
22 here today? Thank you very much for your
23 appearances, and we will be in touch with you as
24 things develop. We're in recess.

25 (The telephone conference was adjourned.)